PUBLIC MATTER – DESIGNATED FOR PUBLICATION

Filed March 16, 2001

REVIEW DEPARTMENT OF THE STATE BAR COURT

In the Matter of **SHERE R. BAILEY**, A Member of the State Bar.	**98-O-01442; 98-O-03538** **OPINION ON REVIEW**

The principal issue we address in this matter is whether or not the total absence of participation in the disciplinary process in this court by an attorney charged with misconduct should have an effect on the discipline recommended, particularly the imposing of conditions of probation as a part of a stayed suspension in light of recently adopted rule 205 of the Rules of Procedure of the State Bar (rule 205).[1] As a part of that issue, we also address the requirement of rule 290 of the Rules of Procedure of the State Bar (rule 290) directing that State Bar Ethics School shall be required in all disciplinary recommendations of this court.

For the reasons we shall outline, we conclude that neither the existence of a default nor the requirement that an attorney make a motion under rule 205 prior to being relieved of actual suspension constitute valid reasons for a failure to recommend a specific period of stayed suspension or conditions of probation, if the facts and circumstances of the misconduct otherwise demonstrate the propriety of such recommendations. We further note that the imposition of a requirement that a suspended attorney show rehabilitation under Rules of Procedure of the State

[1]Rule 205 provides, inter alia and in effect, that a disciplined attorney who has been placed on actual suspension by the Supreme Court following the attorney's default in this court will remain on actual suspension until the conclusion of that suspension and until this court grants a motion to terminate the attorney's suspension.

Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct, standard 1.4(c)(ii) (all further references to standards are to this source) does not alter this view. We do note, as the hearing judge determined, that an attorney's failure to participate in his or her disciplinary proceedings is a factor to be considered in aggravation under standard 1.2(b)(vi).

Statement of the Case

In this default matter the hearing judge found, as we determine from the culpability conclusions set forth under the individual counts of charged misconduct in his second amended decision, respondent Shere R. Bailey culpable of four counts of withdrawing from client employment without taking reasonable steps to avoid prejudice to the rights of the client in violation of rule 3-700(A)(2) of the Rules of Professional Conduct, all occurring in the latter part of 1997 or the first part of 1998. In addition, he found respondent culpable of one count of collecting an illegal fee in violation of rule 4-200 of the Rules of Professional Conduct, one count of failing to return a client's papers and file in violation of rule 3-700(D)(1) of those rules, one count of failing to perform competently and diligently in violation of rule 3-110(A) of those rules, one count of failing to respond to reasonable status inquiries from her client in violation of Business and Professions Code section 6068, subdivision (m),[2] and one count of failing to maintain a current business address with the State Bar in violation of section 6068, subdivision (j). Finally, the hearing judge found respondent culpable of one count of violating her duty, under section 6068, subdivision (i), to cooperate with State Bar investigations because she failed to respond to a letter that a State Bar investigator sent her regarding the complaints that three of her clients had made against her.[3]

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[2]All further references to "section" are to the Business and Professions Code unless otherwise indicated.

[3]In the introduction of the hearing judge's decision he fails to note a number of the culpability findings. This recital of found culpability is determined from the body of the decision.

Although the State Bar does not challenge the culpability findings of the hearing department, in its opening brief it does seek review of the hearing judge's disciplinary recommendation[4]. That recommendation included two years' actual suspension, continuing until respondent shows her rehabilitation under standard 1.4(c)(ii) and until she makes restitution in the sum of $4,000 to her former client Mia Heard. The State Bar asks that we modify the recommended discipline to include (1) a specific period of stayed suspension, (2) a requirement that respondent be ordered to comply with such probation conditions as are reasonably related to her found misconduct as may be imposed by the State Bar Court as a condition for terminating her actual suspension, (3) a requirement that she attend the State Bar Ethics School and (4) an order that respondent pay restitution to her former client Nola Seidel.

The Notice of Disciplinary Charges (NDCs) in both of the consolidated cases involved in this matter were properly served on respondent during the month of August 1999. Respondent failed to file a response to the NDCs and has made no appearance in response to those notices, nor has she undertaken any effort to vacate her default. Because she failed to file a response to either of the NDCs, respondent's default was entered and she was involuntarily enrolled as an inactive member of the State Bar. (§ 6007, subd. (e); Rules Proc. of State Bar, rule 500.) Respondent will remain on involuntary inactive enrollment until her default is set aside or this proceeding is completed. (§ 6007, subd. (e)(2); Rules Proc. of State Bar, rule 501.)

Respondent was admitted to practice in June 1991. No evidence of prior discipline was introduced. The case was submitted on the well pleaded facts contained in the NDCs[5] and four exhibits including the declaration of Seidel. Although there is no dispute as to the evidence, we briefly summarize the evidence giving rise to the hearing judge's findings of culpability, which

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[4]The State Bar waived oral argument before the review department.

[5]The well pleaded allegations of fact are deemed admitted in a default matter. (§ 6088; Rules Proc. of State Bar, rule 200(d)(1)(A).)

we adopt. In spite of this brief summary, we have reviewed the record de novo as we are obligated to do. (Cal. Rules of Court, rule 951.5; Rules Proc. of State Bar, rule 305(a); *In re Morse* (1995) 11 Cal.4th 184, 207.)

Respondent's misconduct involved four separate clients, three of whom had engaged respondent to handle the probate of estates in which they had an interest and one of whom sought the preparation of estate planning documents. Respondent's employment in the three probate matters commenced in June 1994 in the first matter, June 1996 in the second matter, and August 1997 in the third matter. In the first matter, respondent collected a $1,500 fee without authority of court, demanded additional fees to complete the probate and then failed to respond to calls from the client, followed by respondent vacating her office in either December 1996 or January 1997 and not leaving her clients any means of contacting her. It became necessary for the client to complete the probate herself.

In the second probate matter, respondent was hired to prevent secured creditors from foreclosing on real property standing in the name of the decedent. In spite of the client being able to raise the money necessary for a stay on the foreclosure by one creditor a foreclosure sale by that creditor was set for December 2, 1997. An additional foreclosure sale was scheduled for November 20, 1997, by a separate creditor. Despite the repeated efforts of the client, he was unable to communicate with respondent concerning the foreclosure sale of November 20. Although the client appeared at that sale with sufficient funds available to satisfy the creditor, the property was sold to a third person because the client had only a personal check. On that same day and following the sale, the client met respondent in the lobby of her office building. Because respondent was moving she advised the client to call her in a few days. Thereafter, the client was unable to communicate with respondent. Despite demands, respondent failed to deliver the file to either the client or his subsequent attorney.

In the third probate matter, Mia Heard hired respondent in June 1996 and gave her $275 for filing fees and costs at that time. Respondent commenced the probate in December 1996, and she collected $4,000 in advanced attorney's fees and costs from Heard without a court order in that same month. Commencing in April 1997, there was no contact between respondent and the client until January 1998, when the client was able to reach respondent on the telephone. Thereafter, the client wrote, faxed, and telephoned respondent, all without success. The client's correspondence was returned with a notation from the United States Postal Service: "attempted, not known." On going to respondent's office in March 1998 the client was informed that respondent had moved two or three months earlier. The client was forced to complete the probate of the estate herself. In its final order, the probate court denied any attorney's fees.

In the estate planning matter, Nola Seidel paid the sum of $1,990 to respondent in April 1996, after having been quoted a fee of $1,500. Between March 1997 and November of that year, Seidel complained of errors in the disposition of assets made in the documents and was informed in October or November that it would cost an additional $550 to make the corrections. That sum was sent to respondent. After reaching respondent in January 1998, the client was unable to reach respondent, nor did she have an address to which she might send correspondence. The client's attempt to write respondent was returned by the Postal Service, marked: "Return to sender."

On April 7, 1999, a State Bar investigator wrote and mailed a letter to respondent at her official address of record with the State Bar, inquiring about each of the three probate matters described above. No response to that letter was received from respondent, nor was the letter returned as undeliverable by the Postal Service. Even though the investigator's April 7, 1999, letter to respondent was not returned as undeliverable by the Postal Service, the investigator sent respondent another letter on May 12, 1999, giving respondent a second opportunity to respond to the complaints made against her with respect to the three probate matters. The investigator did

not, however, mail that May 12 letter to respondent's address of record, but instead, mailed it to respondent at an address which the investigator believed to be respondent's home address. Respondent did not respond to that letter; nor was it returned as undeliverable by the Postal Service. Because the May 12 letter was not sent to respondent's address of record and because there is no clear and convincing evidence that the address to which that letter was mailed was actually respondent's home address, we do not consider her failure to respond to the May 12 letter to be sufficient evidence of her failure to cooperate in a State Bar investigation in violation of section 6068, subdivision (i). We base our determination of culpability on this count solely upon her failure to respond to the investigator's April 7, 1999, letter.

On June 15, 1999, the same State Bar investigator wrote and mailed a letter to respondent at her address of record with the State Bar, inquiring about the events surrounding the estate plan described above. That letter was returned by the Postal Service marked: "Return to Sender, Unable to Forward, No Forward Order on File." This establishes that respondent failed to maintain a current address with the State Bar.

In addition to the culpability found, as outlined above, the hearing judge found an absence of mitigation. In aggravation, he found that respondent's misconduct harmed one of the probate clients (std.1.2(b)(iv)) and that respondent committed multiple acts of wrongdoing (std.1.2(b)(ii)). We agree with and adopt these findings. The hearing judge further found that respondent failed to participate in this disciplinary proceeding before the entry of her default (std. 1.2(b)(vi)). We agree with this finding, but note that the conduct relied on for this finding so closely equals the misconduct giving rise to the finding of culpability under section 6068, subdivision (i) and the entry of respondent's default that it warrants little weight.

The hearing judge recommended that respondent be actually suspended for a period of two years and until (1) she has shown proof satisfactory to the State Bar Court of her rehabilitation, present fitness to practice and present learning and ability in the general law in

accordance with standard 1.4(c)(ii), (2) she pays $4,000 to her former client Mia Heard or the Client Security Fund if it has paid, together with interest at the rate of 10 per cent per annum from December 9, 1996, (3) she attends a session of the State Bar's Ethics School and passes the test given at the end of such session, (4) she pass the Multistate Professional Responsibility Examination and, (5) respondent brings a rule 205 motion to terminate her actual suspension.

Following our independent review of the limited record before us we adopt as our own the hearing judge's findings of fact and conclusions as to culpability, aggravation and mitigation, as modified above.

Discussion of Discipline

Our principal concerns in disciplinary matters are "the protection of the public and the courts, the preservation of confidence in the legal profession [citation], and the maintenance of the highest possible professional standards for attorneys." (*Conroy v. State Bar* (1991) 53 Cal.3d 495, 503; std.1.3.) As we noted in *In the Matter of Marsh* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 291, 299, "[i]n determining the nature and degree of discipline, our Supreme Court instructs us that we must examine the facts in each case and consider the gravity of the misconduct, including the mitigating and aggravating evidence, in light of the purposes of discipline. [Citations.] These relevant factors are balanced on a case-by-case basis. [Citation.] Nevertheless, the Supreme Court has often expressed the need to assure consistency in disciplinary cases. [Citations.]"

Following our review of discipline imposed in like cases, we find the greatest guidance from *Young v. State Bar* (1990) 50 Cal.3d 1204 and *Bledsoe v. State Bar* (1991) 52 Cal.3d 1074. In *Young* the attorney was found to have abandoned "several" clients by moving to Florida after approximately six years in practice. The misconduct was not found to constitute a pattern, having all occurred in a four month period. In that contested matter, Young's illness was found

to contribute to mitigation. Young was suspended for three years, stayed on conditions including, inter alia, that he serve two years' actual suspension.

In *Bledsoe*, in a five-to-two decision, the Supreme Court found the absence of a pattern of misconduct where the attorney abandoned or failed to perform for four clients, failed to return fees to two clients and failed to cooperate with the State Bar investigation into his misconduct. There, Bledsoe defaulted, although he thereafter unsuccessfully sought to set the default aside. The Supreme Court imposed a five-year suspension, stayed, and placed Bledsoe on probation for five years, including among the conditions of probation two years' actual suspension. In neither of those cases did the Supreme Court address the issue of requiring a showing of rehabilitation under standard 1.4(c)(ii).

Included in the array of available discipline are conditions of probation that rely on stayed suspension to provide a mechanism to enforce those conditions. That is, on the violation of such a condition of probation an attorney may suffer further discipline, including actual suspension up to the period of stayed suspension. The history of probation as a disciplinary tool in matters involving attorney misconduct has been carefully set forth in *In the Matter of Marsh, supra*, 1 Cal. State Bar Ct. Rptr. 291 at pages 298-299. As we there remarked: "The Supreme Court has noted the rehabilitative aim of probation in disciplinary matters (*Rodgers v. State Bar* (1989) 48 Cal.3d 300, 319; *In re Nevill* (1985) 39 Cal.3d 729, 738, fn. 10) [fn.omitted], as well as noting implicitly the benefits of probation monitoring (*Rodgers v. State Bar, supra,* 48 Cal.3d at p. 319). Unlike the criminal justice system, punishment is not one of the objectives of attorney discipline. (*Id*. at p. 318.)" (*In the Matter of Marsh*, *supra*, 1 Cal. State Bar Ct. Rptr. at p. 299.)

As the State Bar points out, it is not uncommon for the Supreme Court to include stayed suspension in those cases where they have required a standard 1.4(c)(ii) hearing. (E.g., *In re Morse, supra,* 11 Cal.4th at p. 213; *Lipson v. State Bar* (1991) 53 Cal.3d 1010, 1023; *Rhodes v. State Bar* (1989) 49 Cal.3d 50, 61.) In each of the cases relied on by the State Bar, the Supreme Court imposed

a five-year suspension that was stayed on the condition that the attorney be placed on probation with a condition imposing a period of actual suspension of two or three years and until the attorney showed rehabilitation under standard 1.4(c)(ii). This court has regularly made recommendations to the Supreme Court containing similar proposed discipline. (*In the Matter of Kroff* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838, 860 [5 years' suspension, stayed, 3 years'actual suspension and a std. 1.4(c)(ii) condition]; *In the Matter of Rubens* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 468, 482 [3 years'suspension, stayed, 2 years' actual suspension with a std.1.4(c)(ii) condition]; *In the Matter of Johnson* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233, 245 [5 years' suspension, stayed, 2 years' actual suspension with a std.1.4(c)(ii) condition].). In the present proceeding, however, no such stayed suspension was included in the hearing judge's discipline recommendation.

The hearing judge rejected the State Bar's contention that *Young v. State Bar, supra*, 50 Cal.3d 1204, was the most analogous case, presumably because Young appeared in the disciplinary process and perhaps because it involved more clients. But the hearing judge did agree that *Bledsoe v. State Bar, supra*, 52 Cal.3d 1074, was persuasive in assessing discipline, and he recited that *Bledsoe* would be followed. However, in *Bledsoe,* the attorney was suspended for five years, stayed, and placed on probation for five years on conditions including that he actually be suspended for the first two years, that he make restitution during the first year of probation, that throughout the entire period of his probation he comply with two additional terms of probation and that he pass a professional responsibility examination within the period of his actual suspension. (*Id.* at pp. 1080-1081.) We note that similar probationary conditions were imposed in *Young*. (*Young v. State Bar, supra,* 50 Cal.3d at p. 1222.)

In neither *Bledsoe* nor *Young* did the Supreme Court address the issue of a showing of rehabilitation under standard 1.4(c)(ii); nor could it have addressed rule 205, which was only recently adopted and which requires that a defaulting attorney, who is placed on actual suspension, remain on that suspension until this court grants a motion to terminate the actual suspension. (See *In the Matter*

of Stansbury (Review Dept., Feb. 24, 2000, 98-H-02633) 4 Cal. State Bar Ct. Rptr.__ .) As noted, the hearing judge in this proceeding did not include in his discipline recommendation a period of stayed suspension as did the Supreme Court in *Bledsoe* and *Young.* Nor did the hearing judge recommend that the State Bar Court be authorized, in accordance with rule 205, to place respondent on probation and impose upon her such probation conditions that the State Bar Court deems necessary or appropriate in the event that respondent files and this court grants a rule 205 motion to terminate her actual suspension.

The hearing judge stated in his decision: "It is not recommended that respondent's actual suspension be accompanied by probationary terms because she failed to appear in this matter and probation, as a result, would probably serve no purpose. And, to some extent, the mini-reinstatement hearing, at which respondent must establish her rehabilitation, will compensate for the absence of probation by requiring respondent to show that she has undergone positive changes and corrected the causes of her misconduct. Further, a period of stayed suspension is unnecessary because respondent shall remain suspended until she meets the guidelines of standard 1.4(c)(ii). Alternatively, if she satisfies that standard, there is no need for the imposition of stayed suspension."

We disagree. Rule 205(a) provides that when an attorney is in default and this court recommends actual suspension "the Court's recommendation shall include each of the following: (1) a specific period of actual suspension; (2) a period of stayed suspension, if appropriate . . . ." Thus, the issue to be determined in the present case is whether a period of stayed suspension is "appropriate."

In both *Bledsoe* and *Young* the Supreme Court determined that the appropriate discipline was a period of suspension, stayed, followed by actual suspension of two years as one of several conditions of probation. This, combined with the Supreme Court's observations on the rehabilitative nature of probation, persuades us that neither a period of stayed suspension, nor provisions authorizing the future imposition of conditions of probation, ought to be rejected by a hearing judge

merely because the default of an errant attorney results in the attorney's actual suspension continuing until he or she makes a showing of rehabilitation under standard 1.4(c)(ii) or until the attorney files and the State Bar Court grants a rule 205 motion to terminate the actual suspension.

As we noted in *In the Matter of Stansbury, supra*, 4 Cal. State Bar Ct. Rptr. at page ___[p. 9], "[t]he entire purpose of rule 205, as derived from the legislative history, is to eliminate the necessity of multiple proceedings against an attorney who is unwilling to participate in the disciplinary process and evidences no interest in maintaining his or her membership in the bar. [Fn. Omitted.] Under rule 205 the burden is placed on a defaulting attorney to bring forward to the State Bar Court his or her interest in continuing the right to practice." We see no loss of protection to the public by not immediately imposing specific conditions of probation on a defaulting attorney found culpable of ethical violations, for that attorney is prohibited from practicing for the duration of the period of actual suspension imposed by the Supreme Court and until such time as he or she files and this court grants a rule 205 motion to terminate the actual suspension. At that time, the appropriate conditions of probation, including attendance at the State Bar Ethics School, should be imposed.

As the opinion in *In the Matter of Marsh, supra*, 1 Cal. State Bar Ct. Rptr. at pages 299-300 points out, the hearing judge is often unable to determine the source of any problem when the charged attorney refuses to appear in the disciplinary process, and is therefore at a disadvantage when searching for appropriate conditions of probation. This issue was also addressed in *In the Matter of Stansbury, supra,* 4 Cal. State Bar Ct. Rptr. at pages ___, ___[pp. 9-11] where we held that, when a defaulting attorney seeks termination of his or her actual suspension by filing a motion under rule 205(c) the State Bar Court may, with the approval of the Supreme Court and in accordance with rule 205(g), place the attorney on probation and impose on him or her such conditions of probation that are reasonably related to the found misconduct and that are deemed necessary or appropriate by the State Bar Court. Upon making such a rule 205 motion, the disciplined attorney will be before the

State Bar Court and, as a part of the consideration of such a motion the underlying reasons for the previously found misconduct can, and should, be explored by the hearing judge.

Nor do we find that a hearing to show rehabilitation under standard 1.4(c)(ii) is a full substitute for recommending a period of stayed suspension or a provision authorizing the State Bar Court to place a defaulting attorney on probation with conditions in accordance with rule 205. This court has no authority to conditionally grant a petition for relief from actual suspension under standard 1.4(c)(ii) or otherwise impose probation type conditions on an attorney when granting a standard 1.4(c)(ii) petition. (Cf. Cal. Rules of Court, rule 951(f); *Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1097-1098; see also Rules Proc. of State Bar, rule 630 et seq.) Any number of factual situations can be anticipated under rule 205 in which a defaulting attorney, otherwise eligible to resume practicing law after making an adequate showing of rehabilitation under standard 1.4(c)(ii), ought to be subject to conditions of probation and probation monitoring for the protection of the public (e.g.. a recovering alcoholic, or former drug abuser).

We also note that, by eliminating a period of stayed suspension, in appropriate cases, a marked reduction in the protection of the public results. In each of the cases we have considered instructive, *Bledsoe* and *Young,* periods of stayed suspension and conditions of probation were imposed. These provisions insured that the disciplined attorney remained under the authority of the discipline system for greater periods of time than recommended here by the hearing judge. While it is true that the requirement of a showing of rehabilitation under standard 1.4(c)(ii) assures the public that respondent will not practice law without further evaluation by this court, it affords no protection beyond that point. In the case of an attorney appearing before this court and participating in the disciplinary process the expectation is generally that the attorney will be subject to probationary conditions attendant to a stayed suspension. It is inappropriate that the mere fact that an attorney fails to appear in the disciplinary process should result in the elimination of that stayed suspension, which is one of the tools of public protection available to the discipline system. The ultimate effect of such a holding is that a

defaulting attorney receives less discipline than does an attorney who fulfills his or her obligation under section 6068, subdivision (i), to participate in the disciplinary process.

We reiterate our observation made in *In the Matter of Marsh, supra*, 1 Cal. State Bar Ct. Rptr. at page 299: "We are not prepared as a matter of policy to preclude all attorneys who fail to respond to disciplinary charges from receiving discipline containing probation conditions." Neither the imposition of a requirement of showing rehabilitation under standard 1.4(c)(ii), nor the adoption of rule 205, which requires a defaulting attorney to bring a motion to end his or her actual suspension, alter this observation. The plain language of rule 205(a) makes this clear.

As a final issue raised by the State Bar, it argues that rule 290 mandates that in all cases where discipline is imposed the respondent be required to attend the State Bar Ethics School. Rule 290(a) provides: "Except as provided by order of the Supreme Court, a member shall be required to satisfactorily complete the State Bar Ethics School in all dispositions or decisions involving the imposition of discipline, unless the member previously completed the course within the prior two years." (But see *In the Matter of Respondent Z* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 85, 88 [rule 290 not applicable in cases in which a reproval is imposed].) We agree with the State Bar's reading of the language of the rule, but disagree that the imposition of a requirement for attendance at the State Bar Ethics School is mandated at this point.

The provisions of rule 290 are most often carried out by recommending attendance at the State Bar Ethics School as a condition of probation.[6] We note that the imposition of discipline on a defaulting attorney is not complete when the imposition of conditions of probation is delayed until the attorney files a rule 205 motion to terminate his or her actual suspension. "The entire purpose of rule 205, as derived from the legislative history, is to eliminate the necessity of multiple proceedings

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[6]When appropriate, our discipline recommendations have included a period of actual suspension "and until respondent successfully completes the State Bar Ethics School." (E.g., *In the Matter of Stansbury, supra,* 4 Cal. State Bar Ct. Rptr. at p. ___ [Mar. 21, 2000, order on motion for reconsideration].)

against an attorney who is unwilling to participate in the disciplinary process and evidences no interest in maintaining his or her membership in the bar. [footnote omitted] Under rule 205 the burden is placed on a defaulting attorney to bring forward to the State Bar Court his or her interest in continuing the right to practice. ¶ It is our judgment that the appropriate time to consider imposing probation and its attendant conditions is when the attorney seeks relief from the actual suspension that may be imposed following his or her default in a disciplinary proceeding." (*In the Matter of Stansbury*, *supra*, 4 Cal. State Bar Ct. Rptr. at pp.___-___ [pp.9-10].)

Consistent with the views expressed in *Stansbury*, we conclude that the appropriate time to consider the imposition of a condition of probation requiring respondent to successfully complete the State Bar Ethics School is at the time of ruling on a rule 205 motion to terminate her actual suspension. We do note, however, that in an appropriate case the recommended discipline could properly contain a defined period of actual suspension and provide that such actual suspension continue until such time as the attorney successfully completes the State Bar Ethics School.

We agree with the hearing judge that respondent is not entitled to retain the $4,000 fee she collected in the Heard probate matter. The fee was taken without obtaining the approval of the probate court, as required by Probate Code, section 10501, and on final distribution that court disallowed any attorney's fees.

The hearing judge declined to recommend the inclusion of any restitution in the Seidel matter, pointing out there is no evidence of the terms of the employment agreement nor evidence of the work preformed by respondent. The State Bar argues that, as a condition of probation in the Seidel matter, respondent should be required to make restitution to Seidel of both the $1,990 paid in April 1997 and the $550 paid in November 1997, plus interest on both amounts, relying on this court's opinions in *In the Matter of Harris* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 219, 229, 231, and *In the Matter of Aguiluz* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32, 40, 46. In the former case all sums paid to an attorney who ultimately abandoned the client were ordered reimbursed even though the attorney

had done some preliminary work. In the latter case, restitution was ordered in an amount shown to have been required to complete the matter for which Aguiluz had been hired and paid.

In the Seidel matter, we have no evidence of what work was completed nor what was necessary to finish or correct the work done. We do know that in November 1997, respondent received $550 from her former client Seidel and that Seidel received no benefit or communication from respondent in response to that payment. For that reason we include in our disciplinary recommendation a provision providing that respondent's actual suspension shall continue until she makes restitution to Seidel in the sum of $550, plus interest.

Discipline Recommendation

For the reasons set forth herein and the reasons set forth in *In the Matter of Marsh, supra*, 1 Cal. State Bar Ct. Rptr. 291, we recommend that respondent Shere R. Bailey be suspended from the practice of law in the State of California for a period of five years, that execution of the five-year suspension be stayed, and that she be actually suspended from the practice of law for two years and until:

> (1) she makes restitution to Mia Heard, or the Client Security Fund if it has paid, in the sum of $4,000 plus interest thereon at the rate of 10 percent simple interest per annum from December 9, 1996, until paid, and she provides satisfactory proof of such restitution to the State Bar's Probation Unit in Los Angeles;
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> (2) she makes restitution to Nola Seidel, or the Client Security Fund if it has paid, in the sum of $550 plus interest thereon at the rate of 10 percent simple interest per annum from November 11, 1997, until paid, and she provides satisfactory proof of such restitution to the State Bar's Probation Unit in Los Angeles;
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> (3) she files and the State Bar Court grants a motion to terminate her actual suspension under rule 205 of the Rules of Procedure of the State Bar; and
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> (4) she shows proof satisfactory to the State Bar Court of her rehabilitation, present fitness to practice, and present learning and ability in the general law in accordance with standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct.

We also recommend, in accordance with rule 205 of the Rules of Procedure of the State Bar, that the State Bar Court be authorized to place Bailey on probation for a specified period of time and that Bailey be ordered to comply with such probation conditions that are reasonably related to the

misconduct found in this proceeding and that are imposed on her by the State Bar Court as a condition for the termination of her actual suspension.

Multistate Professional Responsibility Examination

We further recommend that Bailey be ordered to take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners within the period of her actual suspension and to provide satisfactory proof of passage of the examination to the State Bar's Probation Unit in Los Angeles within said period of actual suspension.

Rule 955 of the California Rules of Court

We further recommend that Bailey be required to comply with the provisions of rule 955 of the California Rules of Court and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court's order in this proceeding.

Costs

It is further recommended that the State Bar be awarded its costs in this proceeding in accordance with Business and Professions Code section 6086.10 and that those costs be ordered payable in accordance with Business and Professions Code section 6140.7.

OBRIEN, P. J.

We concur:

STOVITZ, J.
WATAI, J.

Case Nos. 98-O-01442; 98-O-03538

In the Matter of Shere R. Bailey

Hearing Judge

Michael D. Marcus

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